

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File No. EB-07-IH-9319
)	
CBS Corporation)	NAL/Acct. No. 200832080007
)	
)	FRN No. 0003612447
KUTV Holdings, Inc.)	
)	FRN No. 0004499273
Licensee of Station KUTV(TV),)	
Salt Lake City, Utah)	Facility ID No. 35823
)	

ORDER

Adopted: November 21, 2007

Released: November 21, 2007

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and CBS Corporation (“CBS”) as successor-in-interest to Viacom Inc. The Consent Decree terminates an investigation into compliance by CBS and its wholly owned subsidiary KUTV Holdings, Inc. (“KUTV”), licensee of station KUTV(TV), Salt Lake City, Utah, with the terms of the November 23, 2004 Consent Decree between Viacom, Inc. and the Commission (“*2004 Consent Decree*”).¹

2. The Bureau and CBS have negotiated the terms of the Consent Decree, a copy of which is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by adopting the Consent Decree and terminating the above-referenced investigation.

4. Based upon the record before us, we conclude that there are no substantial and material questions of fact in regard to the above-referenced investigation as to whether CBS and KUTV possess the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,² and the authority delegated by Sections 0.111 and 0.311 of the Commission’s rules,³ the attached Consent Decree **IS ADOPTED**.

¹ *Viacom, Inc. et al.*, Order, 19 FCC Rcd 23100 (2004), *pet. for recon. denied*, 21 FCC Rcd 12223 (2006).

² See 47 U.S.C. § 154(i).

³ See 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the objections to the renewal application of Station KUTV(TV) received by, or in the possession of, the Media Bureau on or around August 28, 2006, as well as any other similar pleadings filed against stations licensed to any subsidiaries of CBS, alleging violation of Section IV, Paragraph 8, Subsection (f) of the *2004 Consent Decree* between Viacom Inc. and the Commission in relation to the Notice of Apparent Liability for Forfeiture issued to CBS concerning the program "Without A Trace", **ARE DISMISSED**.

7. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that copies of this Order shall be sent by regular first class mail and by certified mail, return receipt requested, to CBS Corporation, 601 Pennsylvania Ave., N.W., Suite 540, Washington, D.C. 20004-2601, and to its counsel, Richard Wiley, Esquire and Eve Klindera Reed, Esquire, Wiley Rein LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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CONSENT DECREE

Adopted: November 21, 2007

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By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. The Enforcement Bureau of the Federal Communications Commission and CBS Corporation as successor-in-interest to Viacom Inc., by their authorized representatives, hereby enter into this Consent Decree.

II. DEFINITIONS

2. For purposes of this Consent Decree, in addition to those terms defined elsewhere in this Consent Decree, the following definitions shall apply:

- a. "CBS" means CBS Corporation, including CBS Broadcasting, Inc., KUTV Holdings, Inc., and their successors and assigns;
- b. "CBS Broadcasting" means CBS Broadcasting, Inc., a wholly owned subsidiary of CBS Corporation;
- c. "KUTV" means KUTV Holdings, Inc., a wholly owned subsidiary of CBS Corporation;
- d. "2004 Consent Decree" means the Consent Decree made and entered into on November 23, 2004, by and between the Commission and CBS Corporation's predecessor-in-interest Viacom Inc., including its subsidiaries CBS Broadcasting Inc., UPN, and Infinity Broadcasting Corporation and their respective direct and indirect subsidiaries and affiliated entities which either hold authorizations for television and radio broadcast stations located

throughout the United States or which distribute network or syndicated television and radio programming to broadcast stations⁴;

- e. “Commission” and “FCC” mean the Federal Communications Commission, and all of its bureaus and offices;
- f. “Bureau” means the Enforcement Bureau of the Federal Communications Commission;
- g. “Parties” means the Bureau and CBS;
- h. “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*;
- i. “Rules” mean the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations;
- j. “Indecency Laws” means 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999;
- k. “Adopting Order” means an order of the Bureau adopting this Consent Decree;
- l. “Effective Date” means the date on which the Adopting Order is released;
- m. “Investigation” means the investigation commenced by the Media Bureau’s June 27, 2007 Letter to Howard F. Jaeckel, Esquire, counsel for CBS Broadcasting,⁵ regarding whether CBS Broadcasting or KUTV violated terms of the 2004 Consent Decree by failing to comply with the remedial steps specified in Section IV, Paragraph 8, Subsection (f) of the 2004 Consent Decree following issuance of the Notice of Apparent Liability for Forfeiture issued in *Complaints Against Various Television Licensees Concerning Their December 31, 2004, Broadcast of the Program “Without a Trace,”* 21 FCC Rcd 2732 (2006);
- n. “Final Order” means an action by the FCC or by its staff pursuant to delegated authority (i) which has not been vacated, reversed, stayed, set aside, annulled or suspended, (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion, is pending, and (iii) as to which the time for filing any such appeal, request, petition, or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1934, as amended, and the FCC’s rules and regulations, has expired.

III. BACKGROUND

3. As a result of the 2004 Consent Decree voluntarily entered into by Viacom Inc, and its various subsidiaries, including CBS Broadcasting, the Commission rescinded, vacated and cancelled several forfeiture orders and notices of apparent liability for forfeiture involving

⁴ *Viacom, Inc. et al.*, Order, 19 FCC Rcd 23100 (2004) (“2004 Consent Decree”), *pet. for recon. denied*, 21 FCC Rcd 12223 (2006).

⁵ *See Letter to Howard F. Jaeckel, Esq.*, 22 FCC Rcd 11531 (MB 2007).

violations of the Indecency Laws. The 2004 Consent Decree also terminated several pending indecency investigations. In exchange, Viacom Inc. made a voluntary contribution of \$3.5 million to the United States Treasury and was obligated to adopt and maintain for three years a company-wide compliance plan to prevent the broadcast of material in violation of the Indecency Laws.⁶ Paragraph 8, subsection (f) of this compliance plan required that “[i]f a Viacom-owned station receives a Notice of Apparent Liability for a broadcast occurring after the Effective Date which relates to violation of the Indecency Laws, all employees airing and/or materially participating in the decision to air such material will be suspended and an investigation will immediately be undertaken by Viacom. Such employees will be required to undergo remedial training with respect to the Indecency Laws and satisfy station management that they understand such laws before resuming their duties.”⁷

4. On March 15, 2006, the Commission issued a *Notice of Apparent Liability for Forfeiture* against certain CBS Broadcasting owned-and-operated and affiliated stations that aired the program “Without a Trace” on December 31, 2004 before 10:00 p.m. (“Without a Trace NAL”).⁸ On August 28, 2006, Andrea Gutton and Sharilee Guest (“Objectors”) filed pleadings styled as formal petitions to deny (“Objections”) opposing the license renewal application for Station KUTV(TV), Salt Lake City, Utah, licensed to KUTV Holdings, Inc. The Objectors alleged, inter alia, that CBS violated the terms of the 2004 Consent Decree because subsequent to the issuance of the Without a Trace NAL it failed “to immediately suspend all employees materially participating in the decision to air indecent programming, and launch an internal investigation. . . .”⁹ CBS filed an opposition on January 9, 2007, stating that it had reached a “considered conclusion that it had presented nothing indecent and that none of its employees had done anything wrong.”¹⁰

5. On June 27, 2007, the Media Bureau issued a letter directing CBS to submit a sworn written response to a series of questions relating to compliance with the 2004 Consent Decree.¹¹ KUTV responded to the June 27, 2007 letter in the form of an amendment to the license renewal application for Station KUTV(TV), Salt Lake City, Utah (File Number BRCT-20060601ASL). The response, dated October 19, 2007, explains that it was not readily apparent to CBS management or its counsel that the provisions of Section IV, Paragraph 8, Subsection (f), of the 2004 Consent Decree might apply in the context of scripted shows such as “Without a Trace.” The response also describes various measures CBS has taken to comply with other provisions of the compliance plan in the 2004 Consent Decree.

⁶ 2004 Consent Decree, 19 FCC Rcd at 23105.

⁷ *Id.* at 23106.

⁸ *In the Matter of Complaints Against Various Television Licensees Concerning Their December 31, 2004, Broadcast of the Program “Without a Trace,”* Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 2732 (2006).

⁹ *Objections*, at 3.

¹⁰ *CBS Opposition*, at 2, note 4.

¹¹ *See supra* n. 5.

6. CBS and the Bureau acknowledge that any proceeding that might result from the Investigation will require the significant expenditure of public and private resources. In order to conserve such resources and to promote CBS' compliance with the 2004 Consent Decree, the Parties hereby enter into this Consent Decree in consideration of the mutual commitments made herein.

IV. AGREEMENT

7. CBS agrees that the Bureau, by delegated authority of the Commission, has jurisdiction over the matters contained in the Consent Decree and the authority to enter into and adopt the Consent Decree.

8. CBS and the Bureau each represent and warrant to the other that its signatory is duly authorized to enter into this Consent Decree on its behalf.

9. The Parties agree that this Consent Decree will become effective on the Effective Date. Upon the Effective Date, the Adopting Order and this Consent Decree will have the same force and effect as any other order of the Bureau and any violation of the terms of this Consent Decree will constitute a separate violation of a Bureau order, entitling the Bureau to subject CBS to enforcement action for such violation.

10. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau, through entry of the Adopting Order, which shall immediately resolve and terminate the Investigation and dismiss the Objections, as well as any other similar pleadings filed against stations licensed to any subsidiaries of CBS that pertain to compliance with Section IV, Paragraph 8, Subsection (f) of the November 23, 2004 Consent Decree in relation to the Without a Trace NAL.

11. The Parties agree that this Consent Decree is in the nature of a settlement of all issues relating to the Investigation, does not constitute an adjudication of the merits of the matters focused upon in any of the Objections or any finding on the facts or law regarding any compliance or noncompliance by CBS with the requirements of the Act or the Commission's Rules and orders; provided, however, that solely for the purpose of this Consent Decree and in reliance on fulfillment of the Bureau's commitments hereunder, CBS acknowledges that it inadvertently failed to comply with the remedial steps specified in Section IV, Paragraph 8, Subsection (f) of the 2004 Consent Decree as contemplated by the Commission following issuance of the Without a Trace NAL, understands the 2004 Consent Decree's terms, and has taken steps to ensure that additional such oversights do not recur in the future.

12. The Parties agree that Section IV, Paragraph 8 of the 2004 Consent Decree is amended to provide that the company-wide compliance plan that CBS adopted pursuant to that paragraph will remain in effect for an additional term of three (3) years after its current expiration date, or until November 23, 2010. The Parties agree that all other provisions of the 2004 Consent Decree remain in full force and effect.

13. CBS agrees that it will make a voluntary contribution to the United States Treasury in the amount of Three Hundred Thousand Dollars (\$300,000) within five (5) calendar days of the date on which the Order adopting the Consent Decree becomes a Final Order. CBS will make this contribution without further protest or recourse, by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the Adopting Order. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 358340, Pittsburgh,

PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room Number 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Routing Number 043000261, receiving bank Mellon Bank, and account number 9116229.

14. In consideration of the terms and conditions set forth herein, the Bureau agrees to dismiss the Objections, as well as any other similar pleadings filed against stations licensed to any subsidiaries of CBS that pertain to compliance with Paragraph 8, Subsection (f) of the November 23, 2004 Consent Decree in relation to the Without a Trace NAL, and terminate the Investigation. The Bureau agrees that it will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree to institute, on its own motion, or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion, or in response to any petition to deny or other third-party objection, against CBS concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion, or in response to any petition to deny or other third-party objection, any proceeding, formal or informal, or take any action on its own motion, or in response to any petition to deny or other third-party objection, against CBS with respect to basic qualifications, including its character qualifications, to be a Commission licensee.

15. The Parties agree that any complaints or pleadings filed with the Commission or the Bureau, and/or Commission or Bureau investigations, Notices of Apparent Liability for Forfeiture, Forfeiture Orders, or Memorandum Opinions and Orders relating to CBS and/or its direct and indirect subsidiaries that hold Commission authorizations that have been submitted, begun, or issued subsequent to the effective date of the 2004 Consent Decree other than the Investigation, as defined herein, are excluded from the scope of this Consent Decree.

16. CBS waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided that the Bureau issues an Order adopting the Consent Decree without change, addition, modification or deletion.

17. CBS' decision to enter into this Consent Decree is expressly contingent upon the Commission's issuance of an Adopting Order that is consistent with the Consent Decree, and which adopts the Consent Decree without change, addition, modification, or deletion.

18. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

19. CBS and the Bureau each agrees that if CBS, the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Adopting Order, neither CBS nor the Commission shall contest the validity of the Consent Decree or Order, and CBS shall waive any statutory right to a trial *de novo*.

20. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which CBS does not expressly consent) that provision will be superseded by such Commission rule or order.

21. CBS hereby agrees to waive any claims that it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

22. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

By: _____
Kris Anne Monteith
Chief, Enforcement Bureau
Federal Communications Commission

Date: _____

By: _____
Susan C. Gordon
Senior Vice President, Corporate Controller
& Chief Accounting Officer
CBS Corporation

Date: _____